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ERIC K.,
Plaintiff,
v.
MARTIN J. O'MALLEY, et al.,
Defendants.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 24-cv-03740-DMR

**ORDER DENYING MOTION FOR
SUMMARY JUDGMENT**

Re: Dkt. No. 14

Self-represented Plaintiff Erica K. appeals the Commissioner of the Social Security Administration's (the "Commissioner's") suspension of her benefits, notice of overpayment, and dismissal of her hearing request. [Docket No. 1 (Compl.).] Plaintiff now moves for summary judgment. [Docket No. 14 (Mot.).] The Commissioner filed an opposition (Docket No. 16 (Opp'n)), and Plaintiff did not file a reply. For the reasons stated below, the court denies Plaintiff's motion.

I. PROCEDURAL HISTORY

Plaintiff was found disabled in February 2011. Administrative Record ("AR") 60. On November 1, 2018, following a continuing disability review, a disability examiner determined that Plaintiff's disability had ceased. AR 64-75. A consultative examination was scheduled for May 2019; however, Plaintiff failed to appear. AR 355-60; *see* AR 355-56 ("CE was scheduled to assess her current functioning[; however claimant did not show for the CE.]"); AR 360 ("In order to obtain current functioning, IMCE was scheduled but claimant missed the CE – to date, no response to mail or voice messages – appears to again be I.E. for FTC for PH claim.")

Plaintiff failed to appear at a June 19, 2019 hearing before a disability hearing officer. AR 130-32. In July 2019, the disability hearing officer issued a Notice of Reconsideration that found that Plaintiff was not disabled and that her disability ceased on October 19, 2018. AR 75,

1 138-40. On October 1, 2019, Plaintiff requested a hearing by an administrative law judge (“ALJ”)
2 and indicated that she would like to appear at the hearing. AR 141; *see* AR 151-53. Plaintiff’s basis
3 for appeal was that she did not receive her notice of actions because her address had not been updated
4 in the system. AR 141.

5 An in-person hearing took place on March 20, 2023, which Plaintiff attended. AR 41-56.
6 The ALJ explained that “the decision that [the ALJ] would be making is whether [Plaintiff]
7 continue[s] to be disabled or whether health, physical or mental, has [improved] to the point where
8 [Plaintiff] can work.” AR 47. The ALJ advised Plaintiff that she “ha[d] the right to be represented
9 by an attorney or a non-attorney advocate” that “[w]e can provide that list [of legal aid agencies and
10 organizations that provide referrals to private attorneys] to [Plaintiff] today and if [Plaintiff]
11 decide[s] [she would] like more time to get legal advice or representation [the ALJ] can grant one
12 more postponement for this hearing.” AR 45-46. Plaintiff “would continue to receive [her]
13 benefits . . . pending through until [the ALJ] ma[d]e a decision[.]” AR 46.

14 At the hearing, Plaintiff requested a postponement so she could obtain evidence from her
15 doctor, which the ALJ granted. AR 47. Plaintiff provided her mailing address, and the ALJ
16 informed her that “we will also be sending you a notice in the mail with a new hearing date.” AR 52,
17 54-55. The ALJ stated that “you can also come back in person, just like you are today, or you can
18 agree to do it over the telephone or through online video[. W]hen you get a notice of hearing I think
19 it tells you what your options are and you can agree to any of those.” AR 55.

20 On March 21, 2023, the Office of Hearings Operation sent Plaintiff an Important Notice
21 About Representation that provided a list of organizations she could contact to try to retain counsel.
22 AR 261-62.

23 The hearing was rescheduled for July 10, 2023. AR 263-67. A Notice of Hearing dated
24 April 15, 2023 informing Plaintiff of the new date was sent to Plaintiff at the address that she
25 provided at the March 20, 2023 hearing. *Id.*; *see* AR 52. The Notice of Hearing warned Plaintiff
26 that **“It Is Important That You Attend Your Hearing”** and that “[i]f you do not attend the hearing,
27 I may dismiss your request for hearing, without further notice, unless I find that you have a good
28 reason for not attending.” AR 263 (emphasis in the original).

1 On June 12, 2023, the Office of Hearings Operations sent Plaintiff a Notice of Hearing –
2 Important Reminder, which stated that “[w]e recently mailed you a Notice stating the time and place
3 of the hearing you requested” and provided the date and time for the hearing. AR 281. It further
4 advised Plaintiff that “[i]f you do not attend the hearing, the administrative law judge (ALJ) may
5 **dismiss** your request for hearing, without further notice, unless he or she finds that you have a good
6 reason for not attending. If you do not understand this notice, or if some unexpected problem arises,
7 please call this hearing office at the phone number listed above.” *Id.* (emphasis in the original).

8 Plaintiff did not attend the July 10, 2023 hearing. AR 284. The ALJ sent a letter to Plaintiff
9 stating that “[s]ince you did not appear at your hearing, you will need to show good cause if you
10 still want to have a hearing with an administrative law judge.” *Id.* In response, Plaintiff explained
11 that she missed the hearing because “[i]t took 20 minutes just to get into [the] federal [building],
12 and that “3-4 days per [week] I cannot be far from a toilet and today was one of them.” AR 353.
13 Plaintiff further stated that she needed additional time to collect evidence of her disability and that
14 she “d[id] not understand the way to get a lawyer for free to help [her] with this appeal.” AR 353-
15 54.

16 The ALJ found good cause to reschedule the hearing “one more time” but warned Plaintiff
17 that, “[i]f you do not appear for your next hearing, your case may be dismissed.” AR 287. On
18 July 14, 2023, Plaintiff was issued a Notice of Hearing, which stated that the hearing had been
19 rescheduled to October 2, 2023. AR 288. Under a heading titled **“It Is Important That You**
20 **Attend Your Hearing,”** the Notice stated, “I have set aside this time for you to tell me about your
21 case. If you do not attend the hearing, I may dismiss your request for hearing, without further notice,
22 unless I find that you have a good reason for not attending.” *Id.* (emphasis in the original). The
23 Notice further informed Plaintiff that “[y]ou may ask us if you want to appear by telephone” and
24 that the ALJ “will schedule you to appear by telephone if we find that it is not possible for you to
25 attend in person or by video teleconference, or other extraordinary circumstances prevent you from
26 attending in person or by video teleconference.” *Id.* The Notice of Hearing requested that Plaintiff
27 “complete and return the enclosed acknowledgement form at the earliest opportunity.” *Id.*

28 When Plaintiff did not return the acknowledgement form, on September 5, 2023, the Office

1 of Hearings Operations sent Plaintiff a Notice of Hearing – Important Reminder, stating that “[w]e
2 recently mailed you a Notice stating the time and place of the hearing you requested” and again
3 providing the date and time for the hearing. AR 306. This Notice again warned Plaintiff that “[i]f
4 you do not attend the hearing, the administrative law judge (ALJ) may **dismiss** your request for
5 hearing, without further notice, unless he or she finds that you have a good reason for not attending.
6 If you do not understand this notice, or if some unexpected problem arises, please call this hearing
7 office at the phone number listed above.” *Id.* (emphasis in the original).

8 Plaintiff did not appear at the October 2, 2023 hearing, and the ALJ subsequently sent her a
9 notice stating that “you will need to show good cause if you still want to have a hearing with an
10 administrative law judge.” AR 307. Plaintiff responded that she “mixed up the date” and “wrote
11 10-3-23 back in July 2023.” AR 311. Plaintiff also requested “to change to a phone court hearing
12 if I am [given] ‘good cause’ and giv[e]n another date.” AR 313.

13 On November 27, 2023, the ALJ issued an Order of Dismissal. AR 36-38; *see* AR 33-35
14 (notice of dismissal). After analyzing the factors set forth in 20 CFR § 416.1457(b)(2), the ALJ
15 found “there is no good cause or good reason for the claimant’s failure to appear at the time and
16 place of the hearing.” AR 37. Plaintiff was informed of the hearing date, had twice failed to appear
17 at hearings, and “failed to adequately participate in this continuing disability review for many years,
18 which does not inspire confidence that scheduling a third hearing will result in her attendance.” *Id.*
19 (citation omitted). Moreover, although Plaintiff had been offered a telephonic hearing (AR 288), she
20 did not request one until she was asked to explain the reason for her failure to appear. AR 37.
21 Plaintiff also “had many months to seek assistance from a representative.” *Id.* Furthermore,
22 although Plaintiff realized that she missed her October 2, 2023 hearing that same day, “there is no
23 evidence [Plaintiff] called the agency on the day of her hearing to inquire about her hearing or ask
24 for a phone hearing that day.” *Id.* Plaintiff also “speaks, reads, writes and understands English,”
25 “has a 12th grade education,” and that her “failure to appear is not explained by lack of mental
26 capacity.” *Id.* The ALJ also found that Plaintiff “has physical impairments, including wrist
27 deformities and a cervical spine condition, which qualified her for benefits in the past but which do
28 not explain her failure to appear for the hearings,” particularly where “she was physically and

1 mentally able to attend the March 20, 2023 hearing and respond in writing to two notices to show
2 cause.” *Id.* “Based on the totality of the circumstances, the [ALJ] d[id] not find good cause for the
3 claimant’s failure to attend the second hearing,” dismissed Plaintiff’s request for hearing dated
4 October 1, 2019, and found that “the determination dated July 5, 2019, remains in effect.” *Id.*; *see*
5 AR 75, 138-41.

6 Plaintiff appealed the ALJ’s Order of Dismissal of the Appeals Council on grounds that she
7 did not receive the Notice of Hearing. AR 3-4. The Appeals Council denied the appeal, “f[inding]
8 that [Plaintiff’s] reasons do not provide a basis for changing the Administrative Law Judge’s
9 dismissal.” AR 1.

10 **II. STANDARD OF REVIEW**

11 Pursuant to 42 U.S.C. § 405(g), this court has the authority to review a decision by the
12 Commissioner denying a claimant disability benefits. “This court may set aside the Commissioner’s
13 denial of disability insurance benefits when the ALJ’s findings are based on legal error or are not
14 supported by substantial evidence in the record as a whole.” *Tackett v. Apfel*, 180 F.3d 1094, 1097
15 (9th Cir. 1999) (citations omitted). “The phrase ‘substantial evidence’ is a ‘term of art’ used
16 throughout administrative law to describe how courts are to review agency factfinding.” *Biestek v.*
17 *Berryhill*, 587 U.S. 97, 102 (2019). Substantial evidence is evidence within the record that could
18 lead a reasonable mind to accept a conclusion regarding disability status. *See Richardson v. Perales*,
19 402 U.S. 389, 401 (1971). “[T]he threshold for such evidentiary sufficiency is not high. Substantial
20 evidence, this Court has said, is ‘more than a mere scintilla.’” *Biestek*, 587 U.S. at 103 (citation
21 omitted). “It means—and means only—‘such relevant evidence as a reasonable mind might accept
22 as adequate to support a conclusion.’” *Id.* (citation omitted). When performing this analysis, the
23 court must “consider the entire record as a whole and may not affirm simply by isolating a specific
24 quantum of supporting evidence.” *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)
25 (citation and quotation marks omitted).

26 If the evidence reasonably could support two conclusions, the court “may not substitute its
27 judgment for that of the Commissioner” and must affirm the decision. *Jamerson v. Chater*, 112
28 F.3d 1064, 1066 (9th Cir. 1997) (citation omitted). “Finally, the court will not reverse an ALJ’s

1 decision for harmless error, which exists when it is clear from the record that the ALJ's error was
2 inconsequential to the ultimate nondisability determination." *Tommasetti v. Astrue*, 533 F.3d 1035,
3 1038 (9th Cir. 2008) (cleaned up).

4 **III. ISSUES FOR REVIEW**

5 Before turning to the merits of Plaintiff's motion, the court first considers the scope of her
6 appeal to this court. The basis for Plaintiff's motion is not entirely clear. Plaintiff states that "I do
7 not agree with much of the papers I submitted that I got as SSA responding to my filed . . . District
8 Court case" and that "I'm sure that if I get my day in court I can explain all that is wrong with that
9 [SSA] file about me[.]" Mot. at ECF p.1-2; *see* Docket No. 15 (Pl. Decl.) at 1 ("I included the record
10 from SSA of my file because I see many many discrepancies of the facts. I want to have my day
11 and set it [straight]."). Plaintiff does not identify what in her SSA file she disagrees with or why, or
12 what the factual discrepancies are. Plaintiff's complaint, however, identifies the following: "notice
13 of dismissal," "notice of overpayment," and "benefits suspended." Compl. at 1.

14 An individual may obtain judicial review of any final decision of the Commissioner of Social
15 Security regarding entitlement to benefits. 42 U.S.C. § 405(g). "Modern-day claimants must
16 generally proceed through a four-step process before they can obtain review from a federal court":

17 First, the claimant must seek an initial determination as to his
18 eligibility. Second, the claimant must seek reconsideration of the
19 initial determination. Third, the claimant must request a hearing,
20 which is conducted by an ALJ. Fourth, the claimant must seek review
21 of the ALJ's decision by the Appeals Council. *See* 20 CFR
22 § 416.1400. If a claimant has proceeded through all four steps on the
23 merits, all agree, § 405(g) entitles him to judicial review in federal
24 district court.

25 *Smith v. Berryhill*, 587 U.S. 471, 475-76 (2019). "While § 405(g) delegates to the SSA the authority
26 to dictate which steps are generally required [for judicial review], . . . exhaustion of those steps may
27 not only be waived by the agency, . . . but also excused by the courts[.]" *Id.* (citations omitted); *see*
28 *id.* at 484 ("[T]he Court's precedents do not make exhaustion a pure necessity, indicating instead
that while the SSA is empowered to define the steps claimants must generally take, the SSA is not
also the unreviewable arbiter of whether a claimant has sufficiently complied with those steps.")
(citations omitted).

1 Nevertheless, “[f]undamental principles of administrative law . . . teach that a federal court
2 generally goes astray if it decides a question that has been delegated to an agency if that agency has
3 not first had a chance to address the question.” *Id.* at 488. Supreme Court precedent “discussing
4 exhaustion in the Social Security context confirm[s] the prudence of applying this general
5 principle . . . where the agency’s final decisionmaker has not had a chance to address the merits at
6 all.” *Id.*

7 Here, the Commissioner concedes that “[t]his Court has jurisdiction to review the findings
8 included in the ALJ’s 2023 dismissal” but argues that, as “that dismissal did not include any findings
9 on an overpayment, waiver of overpayment, or any subsequent application for disability[,]” those
10 issues are not subject to appeal. Opp’n at 7. The court agrees. The Appeals Council addressed only
11 one issue: Plaintiff’s “request for review of the Administrative Law Judge’s dismissal dated
12 November 27, 2023.” AR 1; *see* AR 33-38 (notice of dismissal). The court thus finds that it may
13 consider the dismissal of Plaintiff’s request for a hearing. *See Curlee v. Comm’r of Soc. Sec.*, No.
14 20-CV-00145-SAB, 2022 WL 993005, at *2-3 (E.D. Cal. Apr. 1, 2022), *aff’d sub nom. Curlee v.*
15 *O’Malley*, No. 22-15655, 2024 WL 2103275 (9th Cir. May 10, 2024) (court had jurisdiction to
16 review Appeals Council’s denial of plaintiff’s request to review ALJ’s dismissal of request for
17 hearing due to failure to appear); *Johnson v. O’Malley*, No. 23-CV-481 JLS (AHG), 2024 WL
18 2000641, at *12 (S.D. Cal. May 6, 2024), *reconsideration denied*, No. 23-CV-481 JLS (AHG), 2024
19 WL 2965596 (S.D. Cal. June 11, 2024), *and appeal dismissed*, No. 24-4808, 2024 WL 4763192
20 (9th Cir. Aug. 29, 2024) (“[T]he Court is satisfied that, given the circumstances of this case, the
21 ALJ’s decision to dismiss Plaintiff’s request for a hearing for failing to appear—made binding after
22 the Appeals Council denied review—is a ‘final decision . . . made after a hearing’ within the
23 meaning of § 405(g).”) (ellipses in the original).

24 However, the Appeals Council did not consider Plaintiff’s overpayment or suspension of
25 benefits and therefore has not addressed the merits of those claims. *See* AR 1-2. Accordingly, the
26 court declines to consider those issues. *See Quattlebaum v. Saul*, No. DLB-19-3258, 2021 WL
27 1225542, at *3 (D. Md. Mar. 31, 2021) (“confin[ing] . . . review to the finding that plaintiff failed
28 to demonstrate good cause for his failure to appear at his hearing” and not reviewing the merits of

1 plaintiff's disability claim).

2 **IV. DISCUSSION**

3 The court finds that substantial evidence supports the ALJ's dismissal of Plaintiff's request
4 for a hearing. Pursuant to 20 C.F.R. § 404.957(b), “[a]n administrative law judge may dismiss a
5 request for a hearing” if

6 (1)(i) Neither you nor the person you designate to act as your
7 representative appears at the time and place set for the hearing and
8 you have been notified before the time set for the hearing that your
9 request for hearing may be dismissed without further notice if you did
not appear at the time and place of hearing, and good cause has not
been found by the administrative law judge for your failure to appear;
or

10 (ii) Neither you nor the person you designate to act as your
11 representative appears at the time and place set for the hearing and
12 within 10 days after the administrative law judge mails you a notice
13 asking why you did not appear, you do not give a good reason for the
14 failure to appear.

15 (2) In determining good cause or good reason under this paragraph,
16 we will consider any physical, mental, educational, or linguistic
17 limitations (including any lack of facility with the English language)
18 which you may have.

19 *See also I-2-4-25. Dismissal Due To Claimant's Failure To Appear, 1993 WL 643012, at *2 (“Good*
20 *cause” is defined as “a reasonable explanation for failing to comply with a requirement” and,
21 “[w]hen determining whether good cause exists for failure to appear, an ALJ must base their
22 decision on the circumstances of each case[,]” including “any physical, mental, educational, or
23 linguistic limitations that may have prevented the claimant from appearing at the scheduled time
24 and, if applicable, place of the hearing . . .”).*

25 The record shows that Plaintiff received notice of the hearings and was warned that her
26 request for a hearing may be dismissed if she failed to appear. She was sent two written notices
27 informing her of the date and time of the July 10, 2023 hearing. AR 263, 281. Plaintiff similarly
28 received two written notices for the October 2, 2023 hearing. AR 288, 306. Each of these notices
advised Plaintiff that the ALJ may dismiss her request for hearing if she failed to appear. AR 263,
281, 288, 306. The notices further informed Plaintiff that she could request to attend the hearings
remotely. AR 263, 288. Moreover, after she failed to appear at the July 10, 2023 hearing, Plaintiff
was advised that “[y]our hearing will be rescheduled one more time. If you do not appear for your

1 next hearing, your case may be dismissed.” AR 287. Despite these repeated warnings, Plaintiff
2 failed to attend both the July 10 and the October 2, 2023 hearings (AR 284, 307), and nothing in the
3 record indicates that Plaintiff attempted to reschedule them or to appear remotely.

4 Nor can the court find that the ALJ erred in finding that Plaintiff did not demonstrate good
5 cause to excuse her failure to appear at the October 2, 2023 hearing. Plaintiff’s statement confirms
6 that she received notice of the hearing, but wrote down an incorrect date. AR 311 (“I mixed up the
7 date. I looked wrong and wrote 10-3-23 back in July 2023 . . . The Monday 10-2 I did finally find
8 papers . . . It was in fact Monday not Sunday and the date was not 10-3 but 10-2.”). The evidence
9 shows that Plaintiff was aware of the hearing, understood that she must attend and the consequences
10 if she did not appear, and that she could have requested a telephonic hearing if her physical
11 limitations prevented her from leaving her house. AR 311-13. Plaintiff’s history of missing three
12 other hearings (AR 130-32, 287, 355-60) provides further justification for the ALJ’s decision to
13 dismiss her request for hearing.

14 On this record, the court cannot conclude that the ALJ clearly erred in finding that Plaintiff
15 lacked good cause such that the dismissal of her request for hearing was improper. *See Biestek*,
16 587 U.S. at 103 (“[T]he threshold for such evidentiary sufficiency is not high. Substantial evidence,
17 this Court has said, is ‘more than a mere scintilla. . . . It means—and means only—‘such relevant
18 evidence as a reasonable mind might accept as adequate to support a conclusion.’” (citation
19 omitted)).

20 **V. CONCLUSION**

21 For these reasons, the court denies Plaintiff’s motion for summary judgment. A separate
22 judgment will follow.

23
24 **IT IS SO ORDERED.**

25 Dated: September 8, 2025



26 _____
27 Donna M. Ryu
28 Chief Magistrate Judge